

Message Text

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FM SECSTATE WASHDC
TO AMEMBASSY TAIPEI PRIORITY

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E.O. 11652: N/A

TAGS: AINF, OGEN

SUBJECT: PRIVACY ACT GUIDANCE

REF: (A) TAIPEI 674; (B) 75 STATE A-4872; (C) STATE A-395

ON BASIS OF VERY BROAD CUSTOMS REQUEST AS REPORTED
REFTEL (A), RELEASE OF THE REQUESTED INFORMATION WOULD
APPEAR TO CONSTITUTE A VIOLATION OF THE PRIVACY ACT.
DEPARTMENT'S OPINION AT THIS TIME IS BASED UPON FOLLOWING
STEP BY STEP ANALYSIS:

1. PRIVACY ACT, 5 U.S.C. 552A (B) "CONDITIONS OF
DISCLOSURE" STATES: "NO AGENCY SHALL DISCLOSE ANY
RECORD WHICH IS CONTAINED IN A SYSTEM OF RECORDS BY ANY
MEANS OF COMMUNICATION TO ANY PERSON, OR TO ANOTHER
AGENCY, EXCEPT PURSUANT TO A WRITTEN REQUEST BY, OR
WITH THE PRIOR WRITTEN CONSENT OF THE INDIVIDUAL TO
WHOM THE RECORD PERTAINS, UNLESS DISCLOSURE OF THE
RECORD WOULD..." FALL WITHIN ONE OR MORE OF THE
CATEGORIES ENUMERATED IN 552A (B) (1) THROUGH (B) (11)
OF THE ACT. IN ADDITION, SECTION 2 (B) OF THE ACT,
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NOT CODIFIED INTO US CODE, APPEARS TO AUTHORIZE DIS-

CLOSURES OF INFORMATION WITHOUT AN INDIVIDUAL'S CONSENT
TO ANOTHER AGENCY "AS OTHERWISE PROVIDED BY LAW."

2. THERE IS NO AUTHORITY IN FOREIGN SERVICE ACT
AUTHORIZING DEPARTMENT TO DISCLOSE THE REQUESTED
INFORMATION, AND WE ARE AWARE OF NO LAW AUTHORIZING
CUSTOMS TO HAVE ACCESS TO THIS INFORMATION UPON REQUEST,
THEREFORE RELEASE IS NOT "AS OTHERWISE PROVIDED BY LAW."

3. TURNING TO ENUMERATED CATEGORIES IN ACT, 552A (B),
CUSTOMS ATTACHE'S REQUEST COULD POSSIBLY FALL ONLY
UNDER THE (B) (3) "ROUTINE USE" PROVISION OR THE (B)
(7) LAW ENFORCEMENT PROVISION. SEE DEPARTMENT'S
A-4872 OF JULY 17, 1975.

4. THE (B) (7) LAW ENFORCEMENT PROVISION HAS TO BE
ELIMINATED AS A POSSIBILITY AT THIS POINT BECAUSE,
FIRST, NO WRITTEN REQUEST FROM THE HEAD OF THE AGENCY
TO THE DEPARTMENT HAS BEEN RECEIVED. NOR HAS NOTICE
BEEN GIVEN TO US OF A DELEGATION OF AUTHORITY TO CUSTOMS
ATTACHES TO ACT ON BEHALF OF THE SECRETARY OF THE TREASURY.
SECONDLY, EVEN IF A WRITTEN REQUEST WERE TO BE RECEIVED
IN BROAD LANGUAGE REPORTED REFTEL (A), THE REQUEST
DOES NOT SPECIFY THE PARTICULAR PORTION OF THE RECORD
DESIRED AND THE PARTICULAR LAW ENFORCEMENT ACTIVITY FOR
WHICH THE RECORD IS SOUGHT. THEREFORE, FOR THE TIME
BEING, THE (B) (7) PROVISION DOES NOT APPLY.

5. THE (B) (3) DISCLOSURE AS A "ROUTINE USE" NEEDS A
MORE EXPANDED COMMENT. (SEE PAGE 7 AND PAGE 10 OF THE
ENCLOSURE TO DEPARTMENT'S A-395). THE "LAW ENFORCEMENT"
ROUTINE USES LISTED ON PAGE 7 OF THE ENCLOSURE TO
STATE A-395, APPLICABLE TO ALL THE DEPARTMENT'S SYSTEMS
OF RECORDS, PERMITS DISCLOSURE OF INFORMATION BY THE
DEPARTMENT WHEN THE DEPARTMENT IDENTIFIES A VIOLATION
OR A POTENTIAL VIOLATION OF LAW. IN THAT INSTANCE,
THE DEPARTMENT MAY VOLUNTEER THE DISCLOSURE OF THE RECORD
TO THE APPROPRIATE LAW ENFORCEMENT AGENCY CHARGED WITH
THE RESPONSIBILITY OF INVESTIGATING OR PROSECUTING
SUCH VIOLATION. THIS IS NOT THE CASE AT HAND SO THIS
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PORTION OF THE PREFATORY STATEMENT OF ROUTINE USES
CANNOT BE USED.

THE "DISCLOSURE OF REQUESTED INFORMATION" ROUTINE USE
PROVISION MAY BE USED ONLY WHEN THE REQUESTING AGENCY
HAS REASON TO BELIEVE THAT AN INDIVIDUAL HAS VIOLATED
THE LAW. THERE IS NO SUCH SPECIFIC INDICATION IN THE
EXTREMELY BROAD LANGUAGE OF THE CUSTOMS ATTACHE'S

REQUEST.

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6. THE FOLLOWING STATEMENT OF A ROUTINE USE IS FROM THE SYSTEMS DESCRIPTION OF THE SPECIAL CONSULAR SERVICES RECORDS (SEE PAGE TEN OF THE ENCLOSURE TO DEPARTMENT'S A-395). "THIS INFORMATION MAY ALSO BE RELEASED TO OTHER GOVERNMENT AGENCIES WHO HAVE STATUTORY OR OTHER LAWFUL AUTHORITY TO MAINTAIN SUCH INFORMATION." ALTHOUGH TREASURY DEPARTMENT, OF WHICH CUSTOMS SERVICE IS A PART, IS LISTED AS "ROUTINE USER" OF CONSULAR RECORDS, ANY "ROUTINE USE" OF THE DEPARTMENT'S RECORDS BY ANOTHER AGENCY HAS TO BE "FOR A PURPOSE WHICH IS COMPATIBLE WITH THE PURPOSE FOR WHICH IT WAS COLLECTED." THE CUSTOMS ATTACHE'S REQUEST APPEARS TO BE FOR FAR MORE THAN WHAT CUSTOMS WOULD BE ENTITLED TO RECEIVE AS A ROUTINE USE. CUSTOMS WOULD BE ELIGIBLE TO RECEIVE ONLY THOSE ARREST RECORDS WHICH INDICATE A CUSTOMS ENFORCEMENT INTEREST AND NARCOTICS INVOLVEMENT AND ONLY AFTER THE POST IS SATISFIED THAT CUSTOMS HAS THE APPROPRIATE STATUTORY AUTHORITY FOR MAINTAINING SUCH A RECORD AND HAS INDICATED A PURPOSE COMPATIBLE WITH THE PURPOSE FOR WHICH THE RECORD WAS COLLECTED.

7. THEREFORE, DEPARTMENT BELIEVES THAT CUSTOM ATTACHE'S PRESENT REQUEST CAN NOT REPEAT NOT BE COMPLIED WITH. UNLESS EMBASSY HAS ADDITIONAL DETAILS CONCERNING THE SITUATION WHICH MAY BE BROUGHT TO THE DEPARTMENT'S ATTENTION, CUSTOMS ATTACHE MAY WISH TO REQUEST CUSTOMS WASHINGTON TO PURSUE MATTER FURTHER WITH THE DEPARTMENT.

8. IF PERSONAL INFORMATION FROM DEPARTMENT FILES IS RELEASED TO ANOTHER GOVERNMENT AGENCY OR TO AN INDIVIDUAL, UNCLASSIFIED

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POST SHOULD BE AWARE OF THE PRIVACY ACT REQUIREMENT IN 552A (C) OF KEEPING AN ACCURATE ACCOUNTING OF THE DATE, NATURE, AND PURPOSE OF EACH DISCLOSURE MADE TO ANOTHER AGENCY AS WELL AS THE NAME AND ADDRESS OF THE PERSON OR AGENCY TO WHOM THE DISCLOSURE WAS MADE. IN ADDITION, 552A (C) (2) OF THE ACT REQUIRES THAT THE ACCOUNTING BE RETAINED FOR AT LEAST FIVE YEARS OR THE LIFE OF THE RECORD, WHICHEVER IS LONGER, AFTER THE DISCLOSURE FOR WHICH ACCOUNTING IS MADE.

9. ALTHOUGH ATTACHES FROM OTHER AGENCIES ARE UNDER UMBRELLA OF THE MISSION, THEY ARE EMPLOYEES OF OTHER AGENCIES AND ACCOUNTING OF DISCLOSURES TO ATTACHES MUST BE MAINTAINED. DEPARTMENT REALIZES THIS POSES AN ADMINISTRATIVE BURDEN AT MANY POSTS, AND WE ARE

SEEKING SOME DETERMINATION FROM OMB THAT WOULD HELP
ALLEVIATE THE ALMOST UNIQUE POSITION IN WHICH THE ACT
PLACES THE DEPARTMENT. FOR TIME BEING, HOWEVER, THIS
CABLE REPRESENTS DEPARTMENT'S POSITION.

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